

# Association of Legal Aid Plans of Canada

## Discussion Paper on Bill C-37 (Amending Criminal Code)

### Increasing Offenders' Accountability for Victims Act

#### Quick Facts

##### Federal Victim Surcharge

The federal victim surcharge was introduced in 1989 and amended in 1999. A federal victim surcharge is imposed at sentencing on offenders convicted of offences under the *Criminal Code* and the *Controlled Drugs and Substances Act*.

The victim surcharge revenues are distributed to provincial and territorial governments and used to fund programs and services for victims of crime.

"The surcharge was introduced as a replacement for earlier federal/provincial cost sharing programs that funded provincial victim crime compensation programs".<sup>1</sup>

Judges have discretion to waive the surcharge and are doing so. As a result, only a portion of anticipated revenues are being recovered by government.<sup>2</sup>

##### Proposed Changes in Bill C-37<sup>3</sup>

- The amount of the federal victim surcharge is doubled.<sup>4</sup>
- The federal victim surcharge will be applied to all cases without exception.
- Offenders may be able to participate in a fine option program to discharge the surcharge.

##### Current Status of Bill C-37

The bill was passed by the House of Commons on December 12, 2012. The last stage completed was the first reading of the bill in the Senate on December 13, 2012.<sup>5</sup> If it is passed, it will come into force on a day to be fixed by order of the Governor-General in Council.<sup>6</sup>

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<sup>1</sup> Frances Woolley, "Understanding Victim Fine Surcharges", posted April 17, 2011 on **Worthwhile Canadian Initiative: A mainly Canadian economics blog** (Frances Woolley is a Professor of Economics at Carleton University) [http://worthwhile.typepad.com/worthwhile\\_canadian\\_initi/2011/04/understanding-victim-fine-surcharges.html](http://worthwhile.typepad.com/worthwhile_canadian_initi/2011/04/understanding-victim-fine-surcharges.html)

<sup>2</sup> See Tanya Dupuis, Legislative Summary: Bill C-37: Increasing Offenders' Accountability for Victims Act (Library of Parliament, July 2012) at pp. 2-3.

<sup>3</sup> C-37, First Session, Forty-first Parliament, 60-61 Elizabeth II, 2011-2012, House of Commons of Canada, Bill C-37, An Act to amend the Criminal Code, as passed on December 12, 2012 < <http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=5941045>

<sup>4</sup> Surcharge will be 30% (previously 15%) when a fine is imposed. When no fine is imposed, surcharge will be \$100 (previously \$50 for an offence punishable by summary conviction and \$200 (previously \$100) in a case punishable by indictment, *Ibid.*, s. 3(2).

<sup>5</sup> LEGISinfo, House Government Bill, 41<sup>st</sup> Parliament, 1<sup>st</sup> Session. C-37, An Act to Amend the Criminal Code, Status of the Bill < <http://www.parl.gc.ca/LEGISINFO/BillDetails.aspx?Mode=1&billId=5507161&Language=E>

<sup>6</sup> C-37, *op. cit.*

## Options for Discussions

This paper sets out four options for discussion by Association of Legal Aid Plans of Canada (ALAP) representatives:

1. ALAP supports the goals of making offenders more responsible and accountable and providing services to victims of crime. However, we do not support the removal of judges' discretion to waive a victim surcharge where the surcharge would cause undue hardship to offenders or their dependents.
2. ALAP supports the goals of making offenders more responsible and accountable and providing services to victims of crime but the victim surcharge program is not an appropriate vehicle to achieve these goals.
3. ALAP supports the goals of making offenders more responsible and accountable and providing services to victims of crime. However, the victim surcharge program and the proposed changes to it increase the marginalization of those who become offenders due to mental illness or cognitive disabilities, poverty or other underlying systemic triggers.
4. ALAP supports the goals of making offenders more responsible and accountable and providing services to victims of crime but the victim surcharge program fails to address the specific circumstances of Aboriginal offenders.

## Rationale for ALAP Positions

"It is a good idea to deter crime.

It is a good idea to give offenders an opportunity to make reparations for the harms that they have caused.

It is a good idea to provide adequate funding services to victims of crime.

The victim fine surcharge is being asked to meet all three of these goals simultaneously. It just isn't up to the task."<sup>7</sup>

There are a number of rationales which support the options put forward above, some of which support more than one option. They include the following:

- a) **There is no evidence to show that payment of a surcharge will deter crime or make offenders more responsible or accountable:** Justice Canada and the Office of the Federal Ombudsman for Victims of Crime appear to

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<sup>7</sup> Woolley, supra, note 1.

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make a number of assumptions as they develop and change the Victim Surcharge program. Among them, that

- the surcharges can provide sufficient funding to meet the needs of victims;
- a mandatory surcharge will significantly increase the revenue collected through the program; and
- doubling the victim surcharge will impact the behavior of offenders, increase their responsibility and accountability and make things right for victims.

Unfortunately, it does not appear that there is any evidence to support these assumptions. There do not appear to have there been any rigorous evaluations or studies of the Canadian victim surcharge program as it currently exists and its impact on offender behavior or accountability<sup>8</sup>. Nor are there any from similar fine/surcharge programs imposed in other jurisdictions like the United Kingdom. By contrast, there have been some evaluations of other initiatives designed to increase offender accountability and decrease recidivism, such as restorative justice programs in which modest gains were found.<sup>9</sup> As well, programs which housing and other social supports to mentally ill offenders have been found to reduce arrests by 75% and reduce costs to the criminal justice, health and social services systems.<sup>10</sup>

- b) **There is no evidence to show that increasing the surcharge or removing the waiver will bring in more revenue:** While it may appear obvious that increasing the surcharge and imposing it on more offenders will result in more money<sup>11</sup>, the opposite could easily also be true. The Federal Government, as of March 31, 2012, was owed close to \$129 million in unpaid fines and surcharges from over 22,000 people. Over one-quarter of the unpaid amounts were less than \$250.00. The Public Prosecution Service of Canada (PPSC) posted a letter of intent in the hope of contracting with a collection agency to recover this money.<sup>12</sup> (This was to replace the National Fine Recovery Program which was administered by the PPSC and employed 19 full-time and some part-time staff. That program is scheduled to end in March, 2013.) Even when recovery mechanisms, such as garnishment, incarceration, and other debt collection strategies, are provided in house, it is likely that they would cost more than the amount of a surcharge, whether at the current or increased level. It is suggested that the likelihood of the cost exceeding the surcharge increases

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<sup>8</sup> A survey of victims and justice professionals was undertaken in 1999 and is highlighted on page 11.

<sup>9</sup> Public Safety Canada, Research Summary in (2003) 8:1 Restorative Justice and Recidivism accessed at [http://www.publicsafety.gc.ca/res/cor/sum/cprs200301\\_1-eng.aspx](http://www.publicsafety.gc.ca/res/cor/sum/cprs200301_1-eng.aspx).

<sup>10</sup> Alison MacPhail and Simon Verdun-Jones, **Mental Illness and the Criminal Justice System** at p. 3. (International Centre for Criminal Law Reform and Criminal Justice Policy, 2013). This paper was prepared for the Fifth National Criminal Justice Symposium held in Montreal in January 2013.

<sup>11</sup> Currently, victim surcharges are frequently waived. It is unclear what percentage of surcharges are actually paid.

<sup>12</sup> Canadian Press, Ottawa seeks agency to collect millions in unpaid fines, posted August 20, 2012 at <http://www.cbc.ca/news/business/story/2012/08/20/pol-cp-government-unpaid-fines-collection-agency.html>.

where a private, for-profit contractor becomes the vehicle for collection. As well, once the surcharge is mandatory, persons in poverty, on social assistance and unemployed persons who are incarcerated will be responsible to pay such surcharges – increasing the likelihood that projected revenue forecasts will not be met.

It should be noted that the United Kingdom's experience with victim surcharges seems to parallel ours. Currently, victim surcharges raise about £10m annually. In October 2012, surcharges were increased to raise a forecasted £50m annually. However, as of March 2012, the British government was already owed £593m in unpaid fines including victim surcharges<sup>13</sup>.

- c) Judicial discretion in sentencing is a cornerstone of our judicial system and ensures that the punishment truly fits the crime:** The concept that punishment for a criminal offence should fit the offence and the offender is tied to our societal values around what we punish, how we punish and why we punish. It is also tied to values around rehabilitation and an understanding of how crime and offenders are created within a society. Judicial discretion has been the means for implementing this concept and trying to manifest these values. As "zero tolerance" policies in schools and mandatory minimums in the United States have shown, removing discretion often results in punishment that is out of proportion to the offence and the offender.

When applied to poor or marginalized persons, such a punish may even result in situations where that person receives a more severe punishment than what was intended or what would be endured by a middle-class offender. For instance, a \$100 fine would cause little hardship to a middle-class or upper-middle class offender. It would be paid, done and over and the person would get on with his/her life with few remaining repercussions. However, for a person without resources or with some other disadvantage that results in the fine not being paid, the punishment will hang over that person's heads, potentially, for years. As well, if costs are incurred in futile collection attempts, the amount for which the person would ultimately be liable could increase dramatically. (With respect to rationale (a) above, it should be noted that if the \$100 fine did actually represent a punishment that would make the offender accountable and responsible, then the larger amount that a delinquent payer may be liable for would not add anything to accountability and responsibility. It would just be more punishment without rationale.)

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<sup>13</sup> Catherine Baksi, "Offenders set to pay back their victims" in *The Law Gazette* (Law Society of England and Wales, September 2012), at <http://www.lawgazette.co.uk/news/offenders-set-pay-back-their-victims>.

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**d) If Canadians/governments believe that victims services are valuable public goods, worthy of being provided, they should be funded as are other public goods:**

“Only one pound in every six that the government spends supporting victims of crime comes from offenders. Hardworking and innocent taxpayers pay for the rest. This balance is utterly wrong . . . Criminals need to step up and recognize the impact their crime has on others – and they, not law-abiding taxpayers, should pay to help victims rebuild their lives.”<sup>14</sup>

The above quote from the British Minister of Justice sounds very much like the rationale given by the Federal Government in support of Bill C-37. However, it is suggested that the true issue is whether or not a government program is a needed public good. If so, it should be resourced as are most other public goods, through general revenues from taxation, rather than through indirect taxes levied upon specific segments of society. Ironically, as will be discussed below, a large proportion of the offenders who would be tasked with paying for these programs are themselves victims – which is why they are in the criminal justice system.

Also, given the huge amount of unpaid fines and the likelihood of the rate increasing under this Bill, it would be extremely unwise to believe that ongoing programs could be sustained under such volatile and low funding levels.

Finally, the argument that victim services are being funded by surcharge revenues needs to be addressed. There appear to be two flaws to this argument:

- Provinces use general revenues and/or provincial surcharges to fund victims’ services, in addition to federal surcharge revenues<sup>15</sup>. Ninety percent of Alberta’s victims’ services funding comes from surcharges on provincial offences such as photo radar fines, while only 10% comes from Federal funding.<sup>16</sup> Ontario uses general government revenues in addition to federal and provincial victim fines. Woolley concludes that, in effect, victim fine surcharge revenue “puts a lower limit on victim services spending. Unless that lower limit is binding . . . spending on victim services is determined, not by the amount of revenue raised from the victim fine surcharge, but by the amount that provincial governments choose to spend on these services.”<sup>17</sup>; and

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<sup>14</sup> Baksi, supra, n. 11 quoting British Justice Minister Helen Grant.

<sup>15</sup> It should be noted that persons convicted under provincial statutes such as the Highway Safety Act are not likely the same group of offenders under the Code.

<sup>16</sup> Carole Lemieux, Manager, Victims Program, Alberta Justice and Solicitor General, Email to Wendy L. Hinz, Policy and Knowledge Management Counsel, Legal Aid Alberta on January 15, 2013.

<sup>17</sup> Woolley, supra, n. 1.

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- Valuable as they may be, some programs which are funded by federal surcharges through victim funds are more about smoothing the administration of justice in the courts than they are “victim services”. Two examples are:
    - Child Advocacy Centres, which are designed to address the needs of child victims of crime as well as witnesses of crime. While these centres do provide counseling and other services to child and youth victims, they also assist in streamline and improving the process for gathering evidence and assist the Crown in preparing the prosecution’s case<sup>18</sup>; and
    - Legal Aid Alberta’s Emergency Protection Order Program, which is funded through the Victims’ Fund, rather than traditional federal-provincial legal aid funding. This program, while certainly assisting victims and helping them to navigate the court system, provides the Courts with trained, dedicated Duty Counsel to assist persons applying for Emergency Protections Orders. And, also to assist the court in streamlining and facilitating the processing of such applications.

Woolley, in concluding that the surcharge was a tax leveled against a minority of Canadians, noted that

“ . . . there is something strange about the idea of a victim fine surcharge as deterrence. One would think that the purpose of our criminal code is to specify punishments that fit each crime – if the punishments are inadequate or inappropriate, why not just change the criminal code?”<sup>19</sup>

- e) **The argument that criminals, rather than taxpayers, must pay for victims' services is predicated on false assumptions as to who is convicted of crimes and how they come to be offenders:** Seventy-seven percent of cases in Canadian adult criminal courts deal with non-violent offences. These include property offences (break and enter, theft and fraud), administration of justice offences (failure to appear, breach of or failure to comply with an order, etc.), traffic offences and other non-violent Criminal code or federal statute offences. Probation is the most common sentence in 45.5% of cases<sup>20</sup>.

Analyzing which Canadians come into conflict with the law can be challenging. The Court systems do not track much, if any, data including data which would identify offenders beyond gender and age. But, we do know some things. Our criminal justice system is full of persons with mental health issues, the poor,

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<sup>18</sup> Department of Justice Canada, **Background: Child Advocacy Centres** (DOJ, October 2011) accessed at [http://www.justice.gc.ca/eng/news-nouv/nr-cp/2011/doc\\_32652.html](http://www.justice.gc.ca/eng/news-nouv/nr-cp/2011/doc_32652.html).

<sup>19</sup> Woolley, *supra*, n. 1.

<sup>20</sup> Mia Dauvergne, “Adult criminal court statistics in Canada, 2010/2011” in **Juristat** (Stats Can, 2012) accessed at <http://www.statcan.gc.ca/pub/85-002-x/2012001/article/11646-eng.htm>.

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Aboriginal persons and others who have been and are disadvantaged (such as those who spent years in our child welfare systems). They, themselves, are victims of systemic neglect and societal failures. What follows is a breakdown of two of the largest groups (who also tend to be disproportionately poor):

- **Aboriginal Persons:** Aboriginal persons, who made up 3.1% of the Canadian population in 2006, are over-represented in the criminal justice system.<sup>21</sup> In 2007-2008, Aboriginal persons represented 20% of adults who were remanded, 25% of those admitted to provincial or territorial custody, and 18% of adults admitted to federal custody. They also represented 20% and 21% of adults sentenced to probation or a conditional sentence, respectively<sup>22</sup>.

The incarceration rate in Canada in 2008 was 116 persons per 100,000 Canadians. The 2010 incarceration rates per 100,000 adult Canadians, by geographic area, show wild disparities from a low of 59 per 100,000 in Nova Scotia to a high of 843 in the Northwest Territories. The next highest incarceration rates are found in Nunavut (684), Yukon (303), Saskatchewan (187) and Manitoba (177)<sup>23</sup>, all jurisdictions with large First Nations, Metis and/or Inuit populations.

- **Persons with mental health and cognitive issues:** Persons with mental health issues are also over-represented in the criminal justice system. A 2004 report noted that between 1997 and 2001, new admissions to federal correctional institutions decreased by 4.3%, while the proportion of offenders with mental illness increased significantly.<sup>24</sup> In addition, suicide “[was] 3.7 times more prevalent amongst offenders than the general population. In CSC institutions, it [was] the second leading cause of death after natural causes”.<sup>25</sup>

It has been noted that “in part, the expanding rate of incarceration of individuals with mental health problems and/or mental illnesses [can be attributed] to the lack of a national mental health strategy for Canada.”<sup>26</sup>

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<sup>21</sup> Carol LaPrairie, *Examining Aboriginal Corrections in Canada* (Ottawa, Aboriginal Corrections, Minister of the Solicitor General, 2006) ii, <http://www.publicsafety.gc.ca/res/cor/apc/apc-14-eng.aspx>

<sup>22</sup> StatsCan, **Aboriginal Statistics at a Glance**, accessed at <http://www.statcan.gc.ca/pub/89-645-x/2010001/justice-eng.htm>.

<sup>23</sup> Claude Tellier and Veronica Felizardo, **Out of Sight, Back into Mind: Federal Offenders with mental disorders preparing for release into the community**, pp. 3-4. (Correctional Services Canada, October 2011). These numbers include federal, provincial and territorial incarceration rates.

<sup>24</sup> Tim Riordan, **Exploring the Circle: Mental Illness, Homelessness and the Criminal Justice System in Canada** (Library of Parliament, 2004), p. 2.

<sup>25</sup> *Ibid*, p. 3.

<sup>26</sup> Federal-Provincial-Territorial Working Group in Mental Health, **Mental Health Strategy for Corrections in Canada** (FPT WGMH, undated, likely late 2009 or 2010).

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Others have consistently identified the de-institutionalization strategy begun in the 1970's, which lacked and continues to lack the community-level supports for persons who would in the past have been hospitalized or otherwise placed in mental health institutions.

Unfortunately, there are no national statistics on the number of people with mental health issues in the criminal justice system and the Canadian Centre for Justice Statistics does not collect such data<sup>27</sup>. Therefore, depending upon the definitions used for mental illness or cognitive impairment, academics and other researchers have estimated that from 31.7% to 90% of persons in the system have a mental illness (37.7 with a current diagnosis of mental illness<sup>28</sup>; 80-90% when using a definition that includes antisocial personality disorder and substance abuse).

MacPhail and Verdun-Jones also note that studies have shown that 60 to 80% of the prison population could have antisocial personality disorder while other studies have shown high prevalence of Fetal Alcohol Syndrome, developmental disabilities, low IQ and brain injuries.<sup>29</sup> Of offenders in federal custody, 13% of male offenders and 29% of female offenders self-identified as having mental health issues.<sup>30</sup> For those in provincial custody, studies have shown a higher proportion with more than half having a diagnosed mental illness (B.C.) and 61% with at least one diagnosis of mental disorder in their file (Quebec). Most with a mental health disorder have multiple mental health disorders<sup>31</sup>.

Persons with mental illness alone are not more likely to be charged with administration of justice offences. However, where there is also substance use disorder, they were more likely to be charged.<sup>32</sup>

**f) Requiring offenders to pay the current or increased surcharges further marginalizes offenders, many of whom are victims themselves:**

Requiring those who cannot pay surcharges without hardship to themselves or their dependents is simply another example of "criminalizing the poor". Unpaid fines and surcharges are debts that never go away, even when a person is on social assistance or in jail with no ability to pay. There is no statute of

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<sup>27</sup> Charlotte Fraser, Menaka Raguparan and Valerie Bourdeau, **Just Facts: Prevalence of Mental Illness in the Criminal Justice System** (Department of Justice Canada, January 2013).

<sup>28</sup> Brink, Doherty and Boer, "Mental disorder in federal offenders: a Canadian prevalence study", in 2001 **International Journal of Law and Psychiatry** 339.

<sup>29</sup> MacPhail and Verdun-Jones, *supra*, n. 10, p. 3.

<sup>30</sup> Riordan, *supra*, n. 23, p. 6.

<sup>31</sup> Tellier, *supra*, n. 24, p. 2-3.

<sup>32</sup> *Supra*, n. 26, p. 5.

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limitations on them and they don't have to be periodically renewed as to civil judgment debts.

Poor and marginalized offenders will be more vulnerable to the consequences of unpaid fines and the collection process. They could lose their ability to renew a licence or motor vehicle registration. If they have work, this could limit their ability to get to work. If they are making any income or have any money in the bank, their wages or bank accounts could be garnisheed, setting them back further and likely putting them into civil debt. And, it could potentially restrict their ability to access subsidized housing, due to bad credit records<sup>33</sup>.

As noted above, once the surcharge is mandatory, persons in poverty, on social assistance and unemployed persons who are incarcerated will be responsible to pay such surcharges even though they will not have the means to do so.

- g) **A mandatory victim surcharge program fails to address the issues of aboriginal offenders:** Increasing the victim surcharge and removing judicial discretion to waive it will not reduce the over-representation of Aboriginal offenders in correctional institutions. It may actually make Aboriginal values even less important within the justice system. Given that **R. v. Gladue**<sup>34</sup> specifically requires judges to take into account the unique circumstances of aboriginal offenders when imposing sentence, one could argue that Bill C-37 effectively overturns **Gladue**.
- h) **Linking conviction to revenue generation may skew the motivations and incentives underlying the justice system:** If the government believes that it can get "tax" money by convicting more people, would this over time exert pressure on government, prosecutors or others to charge and convict, rather than divert persons from the justice system? While it may seem highly unlikely, this question should be asked.

### Conclusions:

There does not appear to have been solid evidence justifying the creation of the Victims Surcharge Program nor a rigorous evaluation of the impacts on offenders of having to pay a victim surcharge. As a result, it is not known if it makes offenders more accountable and responsible. It is suggested that the no further

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<sup>33</sup> This is somewhat unclear and attempts to get clarification from social housing providers have so far been unsuccessful. For instance, in Alberta, the Social Housing Regulation does not mention debt in its criteria for application but does mention income and assets. However, the application for one type of social housing, Capital Region Housing Corporation, does include a consent to the agency's obtaining of a credit report. See Capital Region Housing Corporation Housing & Subsidy Application Form, accessed at <http://www.crhc.ab.ca/media/27581/housingapplication-821-001.pdf>.

<sup>34</sup> [1999] 1 S.C.R. 688.

imposition of the program as contemplated by Bill C-037 should proceed, until the evidence base supporting such a decision has been satisfactorily established. This would also mean, in addition to rigorous, independent evaluation, the collection and analysis of data relating to the poor and disadvantaged persons within the criminal justice system, who have been identified in this paper. Finally, the impact of mandatory victim surcharges on the underlying principles of sentencing should be explored and changes justified in an evidence-based manner.

### **Additional Background Information**

- a) The position of Justice Canada with respect to victim surcharges:<sup>35</sup>
- The Government has a priority to ensure that offenders are accountable to victims of crime.
  - Victims of crime will benefit by the doubling of victims surcharge amounts.
  - The victims surcharge will apply to all cases without exception.
  - Offenders may be able to participate in a provincial-territorial fine option program to discharge their surcharge.
- b) The position of the Office of the Federal Ombudsman for Victims of Crime:<sup>36</sup>
- Offenders will be more accountable to victims.
  - Surcharge provisions will be consistently applied in all of the provinces and territories.
  - Victims will be better served by:
    - making offenders more responsible and accountable;
    - recognizing the psychological and socio-economic impacts of victimization;
    - increasing funding for the costs of crime that fall to victims;
    - ensuring victims services and programs are better funded; and
    - making counseling and compensation more available to victims.
- c) Policy Centre for Victims Issues of Justice Canada:<sup>37</sup>
- The mandate of the centre is to:
- help victims and their families understand their role in the criminal justice system and the supports that are available;
  - ensure the perspectives of victims are fully considered in the development of federal legislation and policies; and

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<sup>35</sup> Department of Justice, Government of Canada Commits to Doubling Victim Surcharge, The Honourable Rob Nicholson, Minister of Justice and Attorney General of Canada, and the Honourable Senator Pierre-Hugues Boisvenu, Etobicoke, April 24, 2012 < [http://www.justice.gc.ca/eng/news-nouv/nr-cp/2012/doc\\_32730.html](http://www.justice.gc.ca/eng/news-nouv/nr-cp/2012/doc_32730.html); Department of Justice, Background: Victim Surcharge < [http://www.justice.gc.ca/eng/news-nouv/nr-cp/2012/doc\\_32731.html](http://www.justice.gc.ca/eng/news-nouv/nr-cp/2012/doc_32731.html)

<sup>36</sup> Presentation to the Standing Committee on Justice and Human Rights, Bill C-37, by Sue O'Sullivan, Federal Ombudsman for Victims of Crime on October 30, 2012 < <http://www.victimfirst.gc.ca/vv/sub-pre/20121030.html>

<sup>37</sup> Department of Justice Canada, <http://www.justice.gc.ca/eng/pi/pcvi-cpcv/aboutus-aproposdenous.html>

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- increase national and international awareness about the needs of victims of crime and strategies for responding to the needs.

d) 2006 Multi-Site Survey of Victims of Crime and Criminal Justice Professionals across Canada<sup>38</sup>: The study gathered information on the issues for victims and criminal justice professionals that resulted from the amendments to the *Criminal Code* in 1999.<sup>39</sup> Findings included:

- Criminals justice professionals believe victims should be consulted and kept informed;
- Victims usually receive adequate information about the progress of their case in the criminal justice system.
- Dissatisfied victims found information to be limited, inaccurate or confusing;
- Victims stressed the importance of learning about available services shortly after the crime;
- Victims should have the option of initiating victim services;
- Services most helpful for 67% of the victims were counseling and witness support, information and general assistance; and
- Barriers to accessing victims services include language, finances, lack of services in rural areas, lack of services for both genders and physical barriers for those with disabilities.

e) 2006 Federal Victim Surcharge in New Brunswick: An Operational Review: The Attorney General of Manitoba proposed the federal victim surcharge be increased from 15% to 20% as revenues from the surcharge were much less than expected. Data from the New Brunswick Justice Information System for 2000-2005 was used to calculate average rates of imposition and collection. Also, 861 cases from 2005 – 2006 were manually reviewed. Highlights of the Report:

- The federal victim surcharge was imposed in 33.8% of cases; waived in 66.2%; and collected in 82.7%.<sup>40</sup>
- The federal victim surcharge was imposed in 25.2% of fine dispositions; 84% of summary convictions; and 93.3% of indictable convictions.
- 99% of the cases manually reviewed lacked documentation of reasons for waiving the federal victim surcharge.

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<sup>38</sup> Prairie Research Associates Inc., Multi-Site Survey of Victims of Crime and Criminal Justice Professionals across Canada (Ottawa, Policy Centre for Victim Issues, Research and Statistics Division, Department of Justice Canada, 2006) < [http://www.justice.gc.ca/eng/pi/rs/rep-rap/2005/rr05\\_vic1/index.html](http://www.justice.gc.ca/eng/pi/rs/rep-rap/2005/rr05_vic1/index.html)

<sup>39</sup> The provisions intended to benefit victims included giving victims the right to read their victim impact statements at sentencing; requiring the judge to inquire before sentencing whether the victim has been informed of the opportunity to give a victim impact statement; requiring all offenders to pay a victim surcharge of 15% on fines or a fixed amount of \$50 or \$100 for summary or indictable offence respectively; clarifying the application of publication bans and providing discretion to order a publication bans on information that could disclose the identity of victims as witnesses; expanding the protection of victims and under the age of 18 years from cross-examination by a self-represented accused in sexual and personal violence offences; allowing any victim or witness with a mental or physical disability to be accompanied by a support person while giving evidence; and ensuring that the safety of victims and witnesses are taken into consideration in judicial interim release determinations.

<sup>40</sup> This very high collection rate is related to the using a single day-s incarceration to discharge a \$50 surcharge.

- The sole enforcement strategy of a single day's incarceration for a \$50 surcharge is meaningless as the offender serves no sentence.
- Offenders are not being made accountable and revenue is not being generated for victim services.

f) 2008-09 Recommendations of the Federal Ombudsman for Victims of Crime<sup>41</sup>: The office was created in 2007 as an arm's-length federal government office. It recommended that:

- The federal victim surcharge should be applied to all cases.
- The first \$100 of a federal inmate's pay should be applied to the federal victim surcharge.
- The federal government should study the needs identified by victims.

g) 2011 Federal Victims Strategy Evaluation<sup>42</sup>: The evaluation assessed the continued relevance and performance of the Policy Centre for Victim Issues from 2005-06 to 2009-10 by focusing on the Victims Fund. The evaluation found:

- There is a strong need for the Federal Victims Strategy;
- the Federal Victims Strategy is a priority of the federal government;
- the federal government should address the issues of victims of crime.
- The full potential of the Victims Fund is not being achieved and awareness of the Federal Victims Strategy is lacking;
- The administrative structure of the centre is lean and this results in some inefficiencies.

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<sup>41</sup> *Making offenders accountable for harm done to victims and providing support to victims of crime*, 2008-09 Recommendations to the Government, Officer of the Federal Ombudsman for Victims of Crime < <http://www.victimfirst.gc.ca/vv/rec0809-rec0809.html#sec4>.

<sup>42</sup> *Federal Victims Strategy Evaluation, Final Report* (Ottawa, Evaluation Division, Strategic Planning and Performance Management, Department of Justice Canada, 2011 < <http://www.justice.gc.ca/eng/pi/eval/rep-rap/11/fvs-sfv/fvse-esfv.pdf>.

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